

# House . . . . . No. 4440

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Message from His Excellency the Governor recommending legislation relative to An Act Providing for the Modernization and Sustainability of the Pension System.

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## The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT  
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GOVERNOR

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LIEUTENANT GOVERNOR

1/26/2010

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislation, entitled "An Act Providing for the Modernization and Sustainability of the Pension System."

Providing a fair, fiscally sustainable and publicly credible pension system for public employees is in the best interests of the Commonwealth, taxpayers and public employees. The pension reform legislation passed in June 2009 addressed long-standing abuses and loopholes in our pension system that resulted in the pension benefits of a few casting a cloud over the credibility of the entire system and over the many public employees who deserved and received fair and appropriate pension benefits.

This legislation proposes a second phase of pension reform to achieve the following objectives:

- Update the system to reflect demographic changes, such as the fact that people are living and working longer;
- Eliminate abuses, through anti-spiking measures, extending the number of years used to calculate pension benefits, and increasing scrutiny of legislation benefiting individual employees; and,
- Address fairness issues, through updating purchase of creditable service and buyback provisions, requiring SJC judges to contribute to their pensions as other state employees do, and limiting the annual pension payout the system and taxpayers support for retirees.

This pension reform legislation is largely informed by and based on the recommendations and work of the Pension Reform Commission chaired by Dr. Alicia Munnell. I thank Dr. Munnell and the members of the Commission for their good work.

I respectfully request your prompt enactment of this legislation.

Sincerely,

DEVAL L. PATRICK,

*Governor.*

# The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

An Act Providing for the Modernization and Sustainability of the Pension System.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 CREATE A CAP ON EARNINGS FOR PURPOSES OF CONTRIBUTIONS AND BENEFITS

2 SECTION 1. The definition of “Regular compensation” in section 1 of chapter 32 of the General  
3 Laws, as amended by section 2 of chapter 21 of the acts of 2009, is hereby further amended by  
4 inserting after the second paragraph the following paragraph:-

5 Notwithstanding any provision of this chapter to the contrary, regular compensation for  
6 any person who becomes a member after July 1, 2010 shall not include salary, wages or other  
7 compensation in whatever form in any calendar year in excess of 43 per cent of the annual  
8 limitation that may be imposed under federal law on the amount of compensation that may be  
9 taken into account when calculating benefits under plans described in 26 U.S.C. section 401(a),  
10 including, but not limited to, the applicable limits for any calendar year under 26 U.S.C. section  
11 401(a)(17).

12 PURCHASE OF CREDITABLE SERVICE (TIMING AND INTEREST RATE)

13 SECTION 2. Section 3 of said chapter 32, as appearing in the 2008 Official Edition, is hereby  
14 amended by inserting after subdivision (8) the following subdivision:-

15 (9) Notwithstanding any provision of this chapter to the contrary, any member who is reinstated  
16 to or re-enters the active service of a governmental unit or who is eligible to receive credit for  
17 other service under this section and does not pay into the annuity savings fund of the system  
18 make-up payments of an amount equal to the accumulated regular deductions withdrawn by the  
19 member, together with buyback interest, within 1 year of the date of reinstatement or re-entry  
20 shall, in order to be entitled to creditable service resulting from the previous employment, be  
21 required to pay actuarial assumed interest instead of buyback interest on all remaining make-up  
22 payments. Eligibility for creditable service for periods of out-of-state service shall be  
23 conditioned upon payment into the annuity savings fund of the applicable retirement system, of  
24 an amount equal to the contributions such member in service would have otherwise paid into the  
25 retirement system for the period of service, as provided in this section, plus actuarial assumed  
26 interest.

#### 27 PAYMENT BY ELECTED OFFICIALS

28 SECTION 3. Section 5 of said chapter 32 is hereby amended by inserting after the word  
29 “service”, in line 38, as appearing in the 2008 Official Edition, the following words:- ,together  
30 with buyback interest, and shall satisfy the requirements for reinstatement under section 105.

#### 31 PRORATE BENEFITS BASED ON NUMBER OF YEARS IN EACH GROUP

32 SECTION 4. Paragraph (a) of subdivision (2) of said section 5 of chapter 32, as so appearing, is  
33 hereby amended by adding the following sentence:- The retirement allowance for members who

have served in more than one group shall be prorated by applying the percentage for each group to the number of years of service in that group.

#### ADJUSTED RETIREMENT AGE FACTORS - 1

SECTION 5. Said section 5 of chapter 32 of the General Laws is hereby further amended by striking out the table in paragraph (a) of subdivision (2), as appearing in the 2008 Official Edition, and inserting in place thereof the following table:-

Per Cent	Group 1	Group 2	Group 4
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2.5	67 or older	62 or older	57 or older
2.375	66	61	56
2.250	65	60	55
2.125	64	59	54
2.0	63	58	53
1.875	62	57	52
1.750	61	56	51
1.625	60	55	50

#### LIMIT ANNUAL INCREASE ON RETIREMENT EARNINGS

SECTION 6. Subdivision (2) of said section 5 of chapter 32, as amended by section 7 of chapter 21 of the acts of 2009, is hereby further amended by inserting after paragraph (e) the following paragraph:-

(f) In calculating the average annual rate of regular compensation for purposes of this section, regular compensation in any year shall not include regular compensation that exceeds the average of regular compensation received in the 2 preceding years by more than 7 per cent, plus an increase determined by the increase in the United States Consumer Price Index for the preceding 2 years, as reported by the actuary under paragraph (f) of subdivision (3) of section 21. This paragraph shall not apply to any increase in the annual rate of regular compensation that results from an increase in hours of employment or a change in position that is determined by the board to be bona fide.

#### MODIFY TERMINATION BENEFITS

SECTION 7. Section 10 of said chapter 32, as amended by sections 9 to 13 of chapter 21 of the acts of 2009, is hereby further amended by striking out paragraph (a) of subdivision (2).

#### ADJUSTED RETIREMENT AGE FACTORS – 2

SECTION 8. Section 10 of chapter 32, as so amended, is hereby further amended by striking out, in lines 24 and 45, as appearing in the 2008 Official Edition, the words “one tenth of one” and inserting in place thereof, in both instances, the following figure:- 0.125.

#### RECOVERING PENSION PAYMENTS TO CONVICTED RETIREES AND

#### CODIFY AG OPINION ON WITHHOLDING PENSIONS

SECTION 9. Section 15 of said chapter 32, as amended by section 53 of chapter 25 of the acts of 2009, is hereby further amended by adding the following 2 paragraphs:-

(6) If a member's final conviction of an offense results in a forfeiture of rights to a pension under this section, the member shall forfeit, and the board shall require the member to repay, all benefits received after the date of the offense of which the member was convicted.

(7) Notwithstanding any other provision of this chapter or any other special or general law to the contrary, when a member has been indicted on charges on which a conviction could reasonably be expected to result in a forfeiture of the member's pension under this section, the board may refuse to accept or process the member's application for retirement until the prosecution has reached a final resolution.

REDUCE WITHHOLDING FOR EMPLOYEES SUBJECT TO ADJUSTED RETIREMENT  
AGE FACTORS

SECTION 10. Subsection (b) of subdivision (1) of section 22 of said chapter 32, as appearing in the 2008 Official Edition, is hereby amended by inserting after paragraph (iv) the following paragraph:-

(iv1/2) withhold on each pay day 8.5 per cent of the regular compensation of each employee in Group 1 who is a member in service of the system, which is received on the day by the member on account of service rendered by him on or after July 1, 2010, and not later than the date of his attaining the maximum age for Group 1, as specified in the table in subsection (a) of subdivision (2) of section 5, in the case of an employee who entered the service of the commonwealth or a political subdivision thereof on or after July 1, 2010; .

84 SJC CONTRIBUTIONS TO RETIREMENT SYSTEM

85 SECTION 11. Section 65D of said chapter 32, as so appearing, is hereby amended by inserting  
86 after the word “office,” in line 5, the following words:- and a chief justice or any associate  
87 justice of the supreme judicial court.

88 INCREASED SCRUTINY OF LEGISLATION BENEFITTING INDIVIDUALS

89 SECTION 12. Said chapter 32 of the General Laws is hereby further amended by adding the  
90 following section:-

91 Section 106. Before any law is enacted that provides specific retirement benefits to named  
92 individuals that are beyond the benefits available under the General Laws, the following  
93 information shall be submitted to the joint committee on public service: (a) an analysis of the  
94 cost of the legislation and the basis for granting the exemption, (b) a confirmation of the cost  
95 analysis from the public employee retirement commission and (c) a recommendation from the  
96 board.

97 CHARGING RETIREE HEALTH INSURANCE TO PRIOR EMPLOYERS

98 SECTION 13. Chapter 32B of the General Laws is hereby amended by inserting after section  
99 9A the following section:-

100 Section 9A1/2. Whenever any retired employee or beneficiary receives a healthcare premium  
101 contribution from a governmental unit in a case where a portion of the retiree’s creditable  
102 service is attributable to service in one or more other governmental units, the first governmental  
103 unit shall be reimbursed in full, in accordance with this paragraph, by the other governmental  
104 units for the portion of the premium contributions that corresponds to the percentage of the



105 retiree's creditable service that is attributable to each governmental unit. The other  
106 governmental units shall be charged based on their own contribution rate or the contribution rate  
107 of the first employer, whichever is lower.

108 The treasurer of the first governmental unit shall annually, on or before January fifteenth, upon  
109 the certification of the board of the system from which the disbursements have been made, notify  
110 the treasurer of the other governmental unit of the amount of reimbursement due for the previous  
111 fiscal year, and the latter treasurer shall immediately take all necessary steps to insure prompt  
112 payment of this amount. In default of any such payment, the first governmental unit may  
113 maintain an action of contract to recover the same, but there shall be no such reimbursement if  
114 the 2 systems involved are the state employees' retirement system and the teachers' retirement  
115 system.

#### 116 ADJUSTED RETIREMENT AGE FACTORS - 3

117 SECTION 14. Wherever, in any General Law, except in the table inserted by section 5 of this  
118 act, a retirement age of 55 is specified for Group 1 or Group 2, it shall be taken to mean 60, and  
119 whenever, a retirement age of 45 is specified for Group 4, it shall be taken to mean 50.

#### 120 INCREASED PERIOD FOR AVERAGING EARNINGS

121 SECTION 15. Whenever, in chapter 32 of the General Laws, a reference is made to 3 years of  
122 creditable service or 3 consecutive years of creditable service, the number 3 shall be taken to  
123 mean 5.

#### 124 STUDY OF CLASSIFICATIONS

SECTION 16. There shall be a special commission to study the Massachusetts public employees' pension classification system.

The commission shall review and make recommendations for reform regarding the Massachusetts public employees' group classification system, beginning with consideration of the work by the Blue Ribbon Panel on the Massachusetts Public Employees Pension Classification system and including consideration and analysis of the cost of providing health care benefits to retirees.

The commission shall consist of 9 members: 1 of whom shall be the secretary of administration and finance, or his designee; 1 of whom shall be the executive director of the public employee retirement administration commission, or his designee; 1 of whom shall be a private citizen, appointed by the governor, who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems; 1 of whom shall be appointed by the speaker of the house; 1 of whom shall be appointed by the senate president; 1 of whom shall have professional experience in employee benefits or in actuarial science and shall be appointed by the governor; 1 of whom shall be selected by the governor from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO; 1 of whom shall be a member of the Massachusetts Municipal Association; and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts.

The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall file a report of its recommendations, together with the actuarial analysis and proposed legislation, if any, with the clerks of the house and senate, the chairs of the house and

147 senate committee on ways and means and the chairs of the joint committee on public service not  
148 later than November 15, 2010.

149 EFFECTIVE DATES

150 SECTION 17. Notwithstanding any general or special law to the contrary and except as  
151 expressly provided otherwise, sections 1, 5, 7, 8, 14 and 15 shall apply only to employees who  
152 become members of a retirement system after July 1, 2010. Sections 2 and 3 shall apply only to  
153 repayments and purchases of creditable service after July 1, 2010.